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7 MRC II DISTRIBUTION COMPANY LP;  
8 MORDECAI WICZYK; ASIF SATCHU;  
9 SONY PICTURES ENTERTAINMENT INC.;  
10 ARIEL EMANUEL; and NEILL BLOMKAMP

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 STEVE WILSON BRIGGS,  
14

15 Plaintiff,

16 vs.

17 UNIVERSAL CITY STUDIOS LLC, et al.,  
18

19 Defendants.  
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Case No. CV 17-6552-VC

[Hon. Vince Chhabria]

**DEFENDANTS' NOTICE OF MOTION  
AND MOTION TO DISMISS FIRST  
AMENDED COMPLAINT PURSUANT  
TO FED. R. CIV. P. 12(b)(6) AND/OR  
12(b)(1); MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
THEREOF**

[Request for Judicial Notice and Declaration of  
Gregory Korn Filed Contemporaneously  
Herewith]

Date: February 22, 2018

Time: 10:00 a.m.

Crtrm.: 4

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on February 22, at 10:00 a.m., or as soon thereafter as the matter can be heard in Courtroom No. 4 of the above entitled Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102, before the Honorable Vincent Chhabria, Defendants MRC II Distribution Company LP; Mordecai Wiczyk; Asif Satchu; Sony Pictures Entertainment Inc.; Ariel Emanuel; and Neill Blomkamp (“Defendants”) will appear and move to dismiss each and every cause of action against them in the First Amended Complaint (“FAC”)—namely, the First, Second, and Fourth through Eleventh Causes of Action.

Defendants’ motion is made pursuant to Rules 12(b)(1), 12(b)(6), and 8(a) of the Federal Rules of Civil Procedure and seeks dismissal on the bases: (1) that the Court lacks jurisdiction pursuant to the “collateral attack doctrine”; (2) that the claims against Defendants are barred by the doctrine of res judicata; and/or (3) that the FAC fails to state a claim upon which relief can be granted in accordance with *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the accompany Request for Judicial Notice and Declaration of Gregory Korn, all papers and pleadings on file in this action, and on such other and further evidence and argument as the Court may lawfully consider in the exercise of its wise discretion.

DATED: January 16, 2018

Respectfully submitted,

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP

By: /s/ Michael J. Kump

Michael J. Kump

Attorneys for Defendants

MRC II DISTRIBUTION COMPANY LP;

MORDECAI WICZYK; ASIF SATCHU;

SONY PICTURES ENTERTAINMENT INC.; ARIEL

EMANUEL; and NEILL BLOMKAMP

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

In October 2013, the plaintiff in this action, Steve Wilson Briggs (“Plaintiff”), filed an action *in pro per* in this Judicial District entitled *Steve Wilson Briggs v. Neill Blomkamp, et al.*, N.D. Cal. Case No. 13-cv-4679-PJH (the “Prior Action”). The complaint in the Prior Action asserted that certain of the defendants in this case, who include the writer, director, producer, and distributor of the motion picture *Elysium* (the “Film”), infringed a screenplay Plaintiff wrote in producing and exhibiting that Film. The Court in the Prior Action, the Honorable Phyllis J. Hamilton presiding, granted summary judgment. *See Briggs v. Blomkamp*, 70 F. Supp. 3d 1155 (N.D. Cal. 2014). The Prior Action is currently on appeal to the Ninth Circuit, where it has been fully briefed and is awaiting a ruling. This new action is a blatant, impermissible attempt to collaterally attack the rulings and judgment issued by Judge Hamilton in the Prior Action, and for this and the other reasons discussed below, the action should be dismissed in its entirety.

The First Amended Complaint (“FAC”) in this case, once again filed by Plaintiff *in pro per*, alleges a grandiose conspiracy perpetrated by film studios Universal Studios, NBCUniversal, Sony Pictures, and Media Rights Capital, actors Matt Damon, Ben Affleck, and Kevin Spacey, talent agent Ari Emanuel, and film producers/executives Bill Block (of MGM) and Modi Wiczky and Asif Satchu (of Media Rights Capital). *See* Dkt. No. 21 (hereinafter “FAC”). In large part, the FAC is unintelligible as to what each of these defendants did and how it supposedly harmed Plaintiff. What can be discerned from the FAC, nevertheless, is that the claims here all arise out of the Prior Action and are an improper attempt to collaterally attack the judgment there. Plaintiff alleges that the defendants conspired in some way to dupe the Court in the Prior Action, thereby leading the Court to issue erroneous rulings on discovery motions, on a motion to exclude a defense expert, and on the ultimate decision granting summary judgment. He further alleges that the defendants in this case conspired after summary judgment was granted in the Prior Action to destroy evidence that he would use were the Ninth Circuit to reverse and remand. According to the FAC, the injury suffered by Plaintiff for which he seeks a remedy was “a judgement [sic] against the Plaintiff in his effort to protect his copyright.” FAC ¶ 224. As demonstrated by this claim of

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injury and the FAC’s many assaults on the rulings in the Prior Action, Plaintiff’s FAC is essentially a “horizontal appeal” to another district judge that contravenes the “collateral attack doctrine” and should be dismissed.

Additionally, the FAC is barred by the doctrine of res judicata. According to the FAC, the injuries for which Plaintiff seeks a remedy also include “the misappropriation of Plaintiff’s work” and the “infringement of the Plaintiff’s copyright—by a foreign actor (Blomkamp).” FAC ¶ 224. Although Plaintiff does not explicitly plead a cause of action that *Elysium* infringed the copyright in his screenplay, that alleged infringement is the harm he is seeking to redress. Thus, in substance, the FAC seeks to relitigate Plaintiff’s unsuccessful copyright infringement claim, and it is barred on that additional basis.

Finally, and distinct from these bases for dismissal, the allegations in the FAC are woefully deficient and must be dismissed. Not only does the pleading fail to provide a “short and plain statement of the case” as required by Fed. R. Civ. P. 8(a), but without exception, the pleaded causes of action are either frivolous on their face or lack sufficient factual allegations demonstrating a “plausible” claim, as required by the Supreme Court decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

For these and the additional reasons discussed herein, Defendants MRC II Distribution Company LP (“MRC”); Mordecai Wiczky; Asif Satchu; Sony Pictures Entertainment Inc.; Ariel Emanuel; and Neill Blomkamp (collectively, the “Defendants”) respectfully request that each of the claims asserted against them be dismissed—namely, the First, Second, and Fourth through Eleventh Claims.

## **II. FACTUAL AND PROCEDURAL HISTORY**

### **A. Plaintiff Lost His Copyright Claims In The Prior Action**

In or about 2013, Plaintiff filed an action for copyright infringement in the United States District Court of the Northern District of California entitled *Steve Wilson Briggs v. Neill Blomkamp, et al.*, N.D. Cal. Case No. 13-CV-4679-PJH, which was assigned to the Honorable Phyllis J. Hamilton. *See* Request for Judicial Notice (“RJN”) ¶ 1; Declaration of Gregory Korn (“Korn Decl.”), Ex. 1. A copy of the Amended Complaint in that Prior Action by Plaintiff is

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1 provided herewith. *See id.*

2 In the Prior Action, Plaintiff alleged that the feature film *Elysium* infringed a screenplay he  
 3 wrote entitled “Butterfly Driver.” Korn Decl., Ex. 1 ¶ 1. Among the defendants named in the Prior  
 4 Action were three who are also named in this matter: (1) Neill Blomkamp, the writer and director  
 5 of *Elysium* (*id.* ¶ 10); (2) Sony Pictures, the distributor of *Elysium* (*id.* ¶ 11); and (3) “Media  
 6 Rights Capital,” the producer of *Elysium* (*id.* ¶ 13).<sup>1</sup>

7 The Amended Complaint in the Prior Action contended that these Defendants must have  
 8 accessed Plaintiff’s screenplay online and used it in producing *Elysium*. It alleged that Plaintiff  
 9 had posted his screenplay “on Kevin Spacey’s and Dana Brunetti’s filmmaker-screenwriter  
 10 website, ‘Trigger Street’ (triggerstreet.com) ... designed to link filmmakers and screenwriters with  
 11 industry professionals.” *Id.* ¶ 18. Plaintiff alleged that triggerstreet.com was the “ONLY place the  
 12 Plaintiff ever posted a complete script of Butterfly Driver,” and that this website was “where the  
 13 Defendants had access to the Plaintiff’s script.” *Id.* ¶¶ 22-23. Plaintiff then alleged in exhaustive  
 14 detail the similarities he contended were present between his work and that of Defendants. *See*  
 15 *generally id.*

16 The Court granted summary judgment of the case in its entirety. *See Briggs v. Blomkamp*,  
 17 70 F. Supp. 3d 1155. The Court found that Plaintiff presented no evidence that anyone associated  
 18 with *Elysium* had accessed his screenplay on triggerstreet.com. *Id.* at 1165-1167. The Court  
 19 further found that the parties’ works were not substantially similar as a matter of law, even if there  
 20 were access. *Id.* at 1167-1177. In a portion of the *Briggs* opinion that is relevant to this case, the  
 21 Court admitted into evidence and credited the testimony of defense expert Jeff Rovin. *Id.* at 1177-  
 22 1178.

23 The grant of summary judgment in the Prior Action is currently on appeal and is awaiting a  
 24 ruling from the Ninth Circuit. *See* RJN ¶ 3, Korn Decl. Ex. 2.

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26 <sup>1</sup> “Media Rights Capital” is not actually an entity but rather the colloquially-used name for  
 27 a group of affiliated companies that produce films and television under that brand, including MRC  
 28 II Distribution Company L.P., which is named as a defendant here.



**B. The Defendants’ Motion To Dismiss The Initial Complaint In This Case For Lack Of Subject Matter Jurisdiction**

Plaintiff filed his initial Complaint in this case *in pro per*. Dkt. No. 1. The substance of Plaintiff’s allegations are discussed in more detail below.

Plaintiff’s initial Complaint alleged that the Court had diversity jurisdiction “per 28 U.S.C. § 1332(a)(2), as one or more Defendant[s] are foreign citizens, and (a)(2), as one is a citizen of a different state.” Dkt. No. 1, ¶ 2. Defendants moved to dismiss the Complaint for lack of subject matter jurisdiction. Dkt. No. 15. Defendants’ motion demonstrated (1) that the Complaint’s allegation of jurisdiction was deficient by virtue of its failure to allege the citizenship of each party and its failure to allege *complete* diversity, (2) that complete diversity could not be alleged in good faith, as several of the named defendants were citizens of California like Plaintiff, and (3) that while the Complaint referenced various federal statutes, the statutes were criminal provisions and customs and duties provision under which Plaintiff has no private right of action, and thus the Court lacked federal question jurisdiction. *See generally id.*

**C. Plaintiff Amended The Complaint In Response To Defendants’ Motion**

Plaintiff filed an opposition to Defendants’ motion to dismiss for lack of subject matter jurisdiction (Dkt. No. 23), but also filed the FAC a day earlier in a seeming attempt to cure the jurisdictional deficiency (Dkt. No. 21). As discussed more in the following section, the FAC pleads thirteen causes of action against several studios, actors, producers, and one talent agent.

Plaintiff has attempted to and perhaps succeeded in curing the jurisdictional deficiency in his pleading by pleading Twelfth and Thirteenth Causes of Action for copyright infringement against actor Kevin Spacey and producer Dana Brunetti. FAC ¶¶ 265 *et seq.* Those two copyright claims appear to allege that Spacey and Brunetti infringed his “Butterfly Driver” screenplay by making it available on triggerstreet.com to Internet users around the world rather than in the United States alone. *Id.* On the basis of those claims, the FAC alleges federal question jurisdiction pursuant to 28 U.S.C. § 1331. *Id.* ¶ 2. Plaintiff appears to contend that the Court has supplemental

jurisdiction over the balance of the state law claims pursuant to 28 U.S.C. § 1367, although the FAC erroneously pleads the existence of such jurisdiction.<sup>2</sup>

### III. THE FIRST AMENDED COMPLAINT

Large swaths of the FAC are unintelligible, not because the language is unclear, but because the allegations seem to have nothing to do with Plaintiff or any harm he claims to have suffered. The FAC includes a lengthy background discussion of the defendants' histories in the entertainment industry and the work they have done together. *See, e.g.*, FAC ¶¶ 27-148. It inexplicably discusses the Sony email leak scandal and certain defendants' involvement in the wholly unrelated film *Steve Jobs*, as well as an unrelated company called "Screenbid." *See id.* ¶¶ 123-148. With these and many other allegations, it is impossible to understand how they pertain to Plaintiff.

Although much of the FAC is impenetrable, it can be discerned from allegations sprinkled throughout the document that the thrust of Plaintiff's claims against Defendants is three-fold:

First, Plaintiff claims that he was wronged in the Prior Action by various purported misdeeds of the defendants. He contends that the defendants in that case "hired a conman, Jeff Rovin" who "committed fraud upon the Court." FAC p. 42 (heading); *see also* FAC ¶ 6 (alleging the defendants "provided a falsified report to the court" in the Prior Action), ¶ 190 ("Rovin's fraud was so extensive that the Plaintiff moved the court to exclude Rovin's 'expert' report"), ¶ 217 (referring to "falsified 'expert' report"). He also contends that the defendants in Prior Action committed discovery abuses. *See, e.g., id.* ¶ 19 (alleging "false statements made during discovery"), ¶ 150 (alleging that interrogatory responses in the Prior Action "made [a] false statement, under oath, regarding a substantial matter in that case"), ¶¶ 159 *et seq.* (alleging a "Rule

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<sup>2</sup> The FAC erroneously alleges that supplemental jurisdiction exists because "this matter is substantially related to Plaintiff's prior federal action." (FAC ¶ 2.) While Defendants agree that this action is substantially related to the Prior Action, this is of course not indicative of supplemental jurisdiction under Section 1367, which is instead concerned with the relationship between the state and federal claims *in this case*. *See* 28 U.S.C. § 1367. That said, in spite of the impenetrability of the FAC as a whole, it would appear that the First through Eleventh Claims have some relationship to the Twelfth and Thirteenth Causes of Action for copyright infringement.

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37 violation” in the Prior Action), ¶ 218 (alleging that “answers to the Plaintiff’s interrogatories” in the Prior Action were part of a “conspiracy to commit fraud and deceit”), ¶ 219 (alleging that “Defendants violated Rule 37” in the Prior Action and “may have changed the outcome of the case”).

Second, Plaintiff claims that the Court in the Prior Action made erroneous rulings in denying his motion to exclude defense expert Jeff Rovin and in granting summary judgment. *See, e.g., id.* ¶ 190 (“Oddly, the court took no interest in the fraud contained in Rovin’s report ... and denied the motion [to exclude his testimony].”), ¶ 224 (alleging that Plaintiff’s injury is the “judgement [sic] against the Plaintiff in his efforts to protect his copyright”).

Third, Plaintiff claims that all Defendants conspired to shut down the triggerstreet.com website after the Prior Action concluded in order to destroy evidence that his “Butterfly Driver” screenplay had been accessed there by the writer/director of *Elysium*. *See, e.g., id.* ¶ 25 (alleging that “6 days after Plaintiff filed his Notice of Appeal (Briggs v. Blomkamp) ... the Defs surreptitiously closed TS [*i.e.*, triggerstreet.com], to destroy incriminating evidence”), ¶ 216 (“Defendants engaged in Spoliation of Evidence by closing and destroying the TS website 6 days after the Plaintiff filed his Notice of Appeal ....”)

The FAC concludes these allegations with a “STATEMENT OF INJURY” in which Plaintiff identifies three alleged injuries:

Among the injuries caused by the Defendants’ actions were (1) the misappropriation of Plaintiff’s work; (2) the infringement of the Plaintiff’s copyright—by a foreign actor (Blomkamp); and (3) a judgement [sic] against the Plaintiff in his effort to protect his copyright.

*Id.* ¶ 224. This allegation of purported harm leaves no doubt that however Plaintiff may style his causes of action, he is simply using this case to collaterally attack the result in the Prior Action and to relitigate the copyright infringement claims he lost there. Indeed, the FAC’s prayer for relief seeks “restitution and disgorgement of all profits [from *Elysium*] (estimated at \$850,000,000—which represents all projected profits the Defendants will realize from the misappropriation of the Plaintiff’s work).” FAC p. 60. These are the *same* damages for copyright infringement that Plaintiff sought in the Prior Action. *See* Korn Decl., Ex. 1, ¶ 255 (alleging in the Prior Action that

“Defendants have realized and continue to realize profits, rightfully belonging to the Plaintiff”).

#### IV. ARGUMENT

Some or all of the moving Defendants are named in each of the First Claim for Civil Conspiracy, the Second Claim for Spoliation of Evidence, the Fourth Claim for Fraud, the Fifth Claim for Deceit, the Sixth Claim for Concealment, the Seventh and Eighth Claims for Negligence and Gross Negligence, the Ninth Claim for violation of California Labor Code § 1700.39, the Tenth Claim for Unfair Business Practices, and the Eleventh Claim for Witness Tampering. For the reasons discussed below, the FAC as a whole should be dismissed on the basis that it violates the collateral attack doctrine and is barred by the doctrine of res judicata. Further, each of the causes of action against Defendants is not adequately alleged and/or fails as a matter of law and should be dismissed on these additional bases.

##### A. The FAC Is Barred By The “Collateral Attack” Doctrine

“The collateral attack doctrine precludes litigants from collaterally attacking the judgments of other courts.” *Rein v. Providian Fin. Corp.*, 270 F.3d 895, 902 (9th Cir. 2001), citing *Celotex Corp. v. Edwards*, 514 U.S. 300, 313, 115 S.Ct. 1493, 131 L.Ed.2d 403 (1995) (“We have made clear that it is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decisions are to be respected.”) (internal quotation marks omitted); *see also Uptergrove v. U.S.*, 2009 WL 1035231 at \*3-4 (E.D. Cal. Apr. 17, 2009) (“Plaintiffs cannot use this lawsuit to collaterally attack the judgment in *Uptergrove I*. While an appeal is pending, the district court’s judgment is the law of the case unless and until reversal by the Court of Appeals.”); *State Farm Mut. Auto Ins. Co. v. Industrial Pharmacy*, 2009 WL 2448474 at \*4-5 (D. Haw. Aug. 11, 2009). Under the collateral attack doctrine, not only are challenges to the judgment in a prior case prohibited, but so too is “[a]ny challenge to the admissibility of certain evidence” in that prior proceeding. *Rinegard-Guirma v. Ocwen Loan Servicing, LLC*, 2016 WL 4257765 at \*2 (D. Or. Aug. 19, 2016). Similarly, a claim that “false testimony led to a fraudulent verdict is an attack on the merits of the prior proceeding” and violates the collateral attack doctrine. *Advocare Intern., L.P. v. Scheckenbach*, 2010 WL 2196449 at \*2 (W.D. Wash. May 27, 2010).

1 In dismissing a complaint as an improper collateral attack, the district court in *Rinegard-*  
 2 *Guirma* aptly summarized the doctrine, stating:

3 [T]his Court is without authority to revisit issues that were previously decided in  
 4 another district court case. To question rulings made in Plaintiff's prior case  
 5 "would be to permit, in effect, a 'horizontal appeal' from one district court to  
 6 another."

7 2016 WL 4257765 at \*3, quoting *Mullis v. U.S. Bankr. Ct., Dist. of Nev.*, 828 F.2d 1385, 1392-  
 8 1393 (9th Cir. 1987).

9 This case is a clear violation of the collateral attack doctrine. The allegations of the FAC  
 10 attack the defendant's discovery conduct in the prior action; they attack the merits of the testimony  
 11 of expert Jeff Rovin; and they attack the district court's reliance on the Rovin report in granting  
 12 summary judgment. Within the causes of action pleaded against Defendants are also explicit  
 13 attacks on the conduct and rulings in the Prior Action. For example, the First Claim for conspiracy  
 14 alleges that "Defendants devised a second conspiracy to prevent the Plaintiff from prevailing in his  
 15 ¶ 229. The Sixth Claim for concealment alleges that "during discovery in *Briggs v. Blomkamp*,  
 16 witnesses and agents for the Defendants intentionally failed to disclose certain facts ...." *Id.* ¶ 248.  
 17 The Tenth Claim for violation of Business & Professions Code § 17200 alleges "Defendants'  
 18 misappropriation of the Plaintiff's work." *Id.* ¶ 260. The Eleventh Claim for witness tampering  
 19 attacks the testimony elicited by Defendants from witnesses in the Prior Action. *Id.* ¶ 263.

20 Based on these allegations, it is clear Plaintiff is attempting to relitigate issues that had to  
 21 be and were addressed in the Prior Action. Moreover, the only *injury* Plaintiff pleads is the  
 22 infringement of his screenplay by the film *Elysium* and the adverse judgment against him in the  
 23 Prior Action. *Id.* ¶ 224.

24 Plaintiff's allegations demonstrate that, regardless of how he styles his causes of action, the  
 25 FAC is nothing more than a collateral attack on the Prior Action. So too does Plaintiff's prayer for  
 26 relief in the FAC, where he demands an award of \$850 million in profits which "represents all  
 27 projected profits the Defendants will realize from the misappropriation of the Plaintiff's work"  
 28 (FAC p. 60)—the very relief Plaintiff was denied when the Court disposed of his claims in the

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1 Prior Action. To find for Plaintiff on his claims, and to award him the relief he seeks, would in  
 2 effect reverse the district court's rulings in the Prior Action and its final judgment dismissing  
 3 Plaintiff's copyright infringement claim.

4 It is well-established that on a Rule 12 motion to dismiss, the Court may consider matters  
 5 that are properly the subject of judicial notice. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688-  
 6 89 (9th Cir. 2001) (holding that on a Rule 12(b)(6) motion the "court may take judicial notice of  
 7 'matters of public record'"); *Zella v. E.W. Scripps Co.*, 529 F. Supp. 2d 1124, 1128 ("On a motion  
 8 to dismiss, it is proper for the court to consider matters subject to judicial notice pursuant to  
 9 Federal Rule of Evidence 201."). This includes pleadings and opinions in prior litigation. *See Lee*,  
 10 250 F.3d at 690 (holding that on a Rule 12(b)(6) motion, a court make "take[ ] judicial notice of  
 11 another court's opinion ... for the existence of the opinion"); *Harris v. County of Orange*, 682  
 12 F.3d 1126, 1132 (holding that courts "may take judicial notice of undisputed matters of public  
 13 record ... including documents on file in federal or state courts").

14 Defendants respectfully request that the Court take judicial notice of Plaintiff's complaint  
 15 in the Prior Action and the opinion of the district court granting summary judgment there, and that  
 16 it find Plaintiff's claims here are an impermissible collateral attack on the judgment in the Prior  
 17 Action, such that the Court lacks jurisdiction and the FAC should be dismissed under Fed. R. Civ.  
 18 P. 12(b)(1). *See State Farm*, 2009 WL 2448474 at \*4 ("Collateral attack is a jurisdictional issue  
 19 that is properly addressed under a Rule 12(b)(1) motion.") (citing *United States v. Lowry*, 512 F.3d  
 20 1194, 1203 (9th Cir. 2008)).

#### 21 **B. The FAC Is Barred By The Doctrine Of Res Judicata**

22 Similar to but distinct from the collateral attack doctrine, the claims against Defendants are  
 23 also barred by the doctrine of res judicata. "The doctrine of res judicata provides that a final  
 24 judgment on the merits bars further claims by parties or their privies based on the same cause of  
 25 action," and "is central to the purpose for which civil courts have been established, the conclusive  
 26 resolution of disputes within their jurisdiction." *Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d  
 27 1047, 1051-52 (9th Cir. 2005), quoting *In re Schimmels*, 127 F.3d 875, 881 (9th Cir.1997)  
 28 (internal quotation marks omitted). The elements of res judicata are: "(1) an identity of claims, (2)



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1 a final judgment on the merits, and (3) privity between parties.” *Id.*

2       There is no dispute that the Prior Action resulted in a final judgment for res judicata  
 3 purposes: the requirement of a final judgment “is satisfied by a summary judgment dismissal  
 4 which is considered a decision on the merits for res judicata purposes.” *Mpoyo v. Litton Electro-*  
 5 *Optical Sys.*, 430 F.3d 985, 988 (9th Cir. 2005). There is also no dispute that there is an identity of  
 6 parties. Plaintiff is suing the same Defendants he named in the Prior Action—MRC, Sony, and  
 7 Blomkamp. The only question is whether there is an identity of claims.

8       Although Plaintiff does not style any of his causes of action as a claim for infringement of  
 9 his screenplay by *Elysium*, it is axiomatic that the “identity of claims” requirement for res judicata  
 10 does not necessitate that the plaintiff has pled identically-styled causes of action. *See Owens v.*  
 11 *Kaiser Foundation Health Plan, Inc.*, 244 F.3d 708, 713-714 (9th Cir. 2001) (finding identity of  
 12 claims despite that second action pled different causes of action than the first, where both cases  
 13 were “predicated on racial discrimination and allege the same circumstances regarding Appellents’  
 14 termination”); *see also Mpoyo*, 430 F.3d at 987. As the Ninth Circuit stated in *Mpoyo*, “[w]hether  
 15 the two suits involve the same claim or cause of action requires us to look at four criteria, which  
 16 we do not apply mechanistically: (1) whether the two suits arise out of the same transactional  
 17 nucleus of facts; (2) whether rights or interests established in the prior judgment would be  
 18 destroyed or impaired by prosecution of the second action; (3) whether the two suits involve  
 19 infringement of the same right; and (4) whether substantially the same evidence is presented in the  
 20 two actions.” *Id.* (quoting *Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 921 (9th Cir.2003)).

21       Each of these factors demonstrates an identity of claims here. The two cases arise out of  
 22 the “same transactional nucleus of facts”—they both involve Plaintiff’s claims that his screenplay  
 23 was accessed and copied unlawfully to his detriment. Plaintiff has in fact admitted as much in his  
 24 filings in this case. *See* Plaintiff’s Motion for Sanctions, Dkt. No. 24 at 6 (“[T]his matter is  
 25 substantially related to the Plaintiff’s Prior Action (Briggs v Blomkamp, C134679 PJH), and much  
 26 of it ‘arises from the same set of operative facts.’”). The two cases “involve infringement of the  
 27 same right”—indeed, Plaintiff’s claimed injury in Paragraph 224 of the FAC is “the infringement  
 28 of the Plaintiff’s copyright” by Blomkamp and others, which was the injury he asserted in the

Prior Action. *Accord Mpooyo*, 430 F.3d at 987 (stressing that the two cases “involve the same overall harms” in finding identity of claims). The two cases would involve substantially the same evidence relating to this alleged infringement. Finally, the “rights or interests established” in the Prior Action would be “destroyed or impaired by prosecution of the second action.” Plaintiff seeks in this case to recover the profits from *Elysium*. FAC p. 60. This is a remedy that Plaintiff could recover *only* under the Copyright Act, 17 U.S.C. 504(a), for the infringement of his screenplay by Defendants’ film. Were Plaintiff somehow to successfully prosecute this action and recover a disgorgement award, the judgment in the Prior Action dismissing his copyright claim would effectively be nullified.

While, as stated above, Plaintiff pleads differently styled causes of action—*e.g.*, for conspiracy, deceit, negligence, *etc.*—the FAC at its heart seeks to relitigate the copyright claim that was litigated and lost in the Prior Action. It is barred by res judicata and should be dismissed.<sup>3</sup>

**C. The FAC Should Further Be Dismissed On The Basis That It Fails To State A Claim For Relief Against Defendants**

Separate and apart from the preclusive doctrines discussed above, the FAC should be dismissed as to Defendants pursuant to Fed. R. Civ. P. 12(b)(6) on the basis that it fails to state a claim upon which relief may be granted. Although Rule 8(a) requires only that a complaint contain a “short and plain statement of the claim showing that the pleader is entitled to relief,” this standard “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). “A pleading that offers ‘labels and conclusions’ or a ‘formulaic recitation of the elements of a cause of action will not do.’” *Id.*, quoting *Twombly*, 550 U.S. at 555. “Nor does a complaint suffice if it tenders ‘naked assertion[s]’

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<sup>3</sup> To the extent the Court concludes that res judicata is not applicable to those of the moving Defendants who were not parties to the Prior Action, the doctrine of “nonmutual collateral estoppel” would nevertheless apply to preclude Plaintiff from relitigating his failed copyright claim. *See Syverson v. Int’l Bus. Machines Corp.*, 472 F.3d 1072, 1078 (9th Cir. 2007) (holding that “nonmutual issue preclusion” applies where “(1) there was a full and fair opportunity to litigate the identical issue in the prior action ...; (2) the issue was actually litigated in the prior action ... (3) the issue was decided in a final judgment ... and (4) the party against whom issue preclusion is asserted was a party or in privity with a party to the prior action”).



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1 devoid of ‘further factual enhancement.’” *Id.* (quoting *Twombly*, 550 U.S. at 557).

2 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
 3 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550  
 4 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows  
 5 the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
 6 *Id.* The determination of whether a complaint asserts a “plausible” claim is a “context-specific task  
 7 that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.  
 8 “But where the well-pleaded facts do not permit the court to infer more than the mere possibility  
 9 of misconduct, the complaint has alleged—but it has not ‘show[n]—‘that the pleader is entitled to  
 10 relief.’” *Id.* (quoting Fed. R. Civ. P. 8(a)(2)).

11 The requirements of *Twombly* and *Iqbal* apply with particular force to allegations of  
 12 conspiracy. “[B]are assertion[s] of conspiracy will not suffice,” *Twombly*, 550 U.S. at 556, nor  
 13 will a “conclusory allegation of agreement at some unidentified point.” *Id.* at 557.

14 Taken as a whole, the allegations of the FAC are anything but “plausible” and do not  
 15 permit the reasonable inference that Defendants are liable for anything. And as discussed below,  
 16 each of the claims is insufficiently pled and/or fails as a matter of law.

### 17 1. The First Cause Of Action For Civil Conspiracy

18 Plaintiff pleads a First Claim for Civil Conspiracy. “A conspiracy is not an independent  
 19 cause of action ....” *Mangindin v. Washington Mut. Bank*, 637 F. Supp. 2d 700, 708 (N.D. Cal.  
 20 2009). On this basis alone, the claim should be dismissed. Additionally, Plaintiff’s pleading of this  
 21 “conspiracy” claims, which he divides into three separate conspiracies, is patently deficient under  
 22 Rule 8(a) and the *Twombly* and *Iqbal* opinions:

#### 23 (a) The First Conspiracy

24 Plaintiff alleges a “First Conspiracy” involving the triggerstreet.com website, where he  
 25 claims to have posted his screenplay. FAC ¶ 227. Specifically, he alleges that *all* Defendants  
 26 conspired to create the triggerstreet.com website, to mislead members about its security features,  
 27 and to “erase evidence of their access of the Plaintiff’s script.” *Id.*

28 These allegations fail to state a claim against the moving Defendants. Absolutely no facts

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are pled or could be pled to support that Defendants had any involvement at all in the triggerstreet.com website (which they did not) and were part of a conspiracy involving this website (which they were not). Plaintiff knows full well that triggerstreet.com was a website owned and operated by actor Kevin Spacey and his producing partner, Dana Brunetti—not the other defendants in this case—and his allegations elsewhere show as much.

Many of Plaintiff’s allegations concede that Spacey and Brunetti alone were the creators and operators of triggerstreet.com. Plaintiff alleged as much in the Prior Action. *See* Korn Decl., Ex. 1 ¶ 18 (referring to triggerstreet.com as “Kevin Spacey’s and Dana Brunetti’s ... website”). Similarly, in his FAC here, Plaintiff alleged that “Defs Spacey and Brunetti ... created the social network, TS,” FAC ¶ 1(2), and that Spacey and Brunetti “conceived of TS.” *Id.* ¶ 33; *see also id.* ¶ 72 (noting that “Trigger Street Productions” is the name of Spacey’s production company), ¶ 77 (referring to Spacey’s and Brunetti’s creation of triggerstreet.com). There is no suggestion in these allegations—nor could there be in good faith—that the moving Defendants had anything to do with Spacey’s and Brunetti’s website.

Similarly, several of Plaintiff’s causes of action tacitly concede Spacey and Brunetti were alone responsible for triggerstreet.com. The Third Claim for breach of contract regarding the triggerstreet.com terms of service, and the Twelfth and Thirteenth Claims relating to supposed misuse of Plaintiff’s screenplay on that site, are all pled against Spacey and Brunetti *alone*.

Also notable is Paragraph 192 of the FAC. Plaintiff alleges there: “Kevin Spacey and Dana Brunetti, *acting alone* or in conspiracy with other Defendants, created a social network website called Trigger Street.” FAC ¶ 192 (emphasis added). This too is a concession from Plaintiff that the other defendants in this case may well have not been involved in triggerstreet.com (which they were not).

In short, Plaintiff has no basis to allege that the any of the defendants other than Spacey and Brunetti had any involvement at all in triggerstreet.com; he pleads no facts to support that they did; and various of Plaintiff’s allegations in the FAC as well as in the complaint in the Prior Action belie his claim that these other defendants were involved in the website. Accordingly, Plaintiff’s conclusory allegations in his First Claim that the moving Defendants conspired in some

1 way regarding the creation, operation, and shutting down of the triggerstreet.com website is a  
2 “bare assertion of conspiracy [that] will not suffice.” *Twombly*, 550 U.S. at 556.

3 Not only are there no facts pled supporting that the moving Defendants had any  
4 involvement in triggerstreet.com, but this “First Conspiracy” claim is utterly devoid of any  
5 specific allegations concerning what the moving Defendants are accused of doing *and how it*  
6 *injured Plaintiff*. In fact, looking at the allegations under the heading “First Conspiracy,” it is  
7 impossible to discern how Plaintiff contends he was damaged. Thus, the moving Defendants are at  
8 a loss as to what the claim against them is. For each of the reasons stated above, this “First  
9 Conspiracy” claim fails as a matter of law.

#### 10 (b) The “Second Conspiracy”

11 The “Second Conspiracy” subsumed within the First Claim alleges a supposed “conspiracy  
12 to prevent the Plaintiff from prevailing in his copyright lawsuit.” FAC ¶¶ 228-229. Not only does  
13 this claim obviously fail under the collateral attack and res judicata doctrines discussed above, but  
14 it pleads *no facts* supporting with “facial plausibility” that Defendants are guilty of the conduct  
15 alleged. *Iqbal*, 556 U.S. at 678.

#### 16 (c) The “Third Conspiracy”

17 The “Third Conspiracy” is simply a mystery. FAC ¶¶ 230-232. It alleges a vague,  
18 amorphous conspiracy “to break California business, labor and ethics codes” in the production of  
19 *Elysium* and other business arrangements not involving Plaintiff. There is no indication of what  
20 Defendants supposedly did that was wrongful, nor any indication of how Plaintiff was harmed as a  
21 result. This is an “unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at  
22 678. These allegations fail to establish Plaintiff’s entitlement to relief in accordance with Rule 8(a)  
23 and do not state a claim upon which relief can be granted.

### 24 2. The Second Cause Of Action For Spoliation Of Evidence

25 Plaintiff alleges that all Defendants “engaged in spoliation of evidence by closing and  
26 destroying their social network, TS (TriggerStreet.com).” FAC ¶ 235. Besides being an attempt at  
27 collaterally attacking the judgment in the Prior Action, this claim, like the First Claim, is devoid of  
28 facts supporting that any of the defendants other than Spacey and Brunetti were involved in

1 triggerstreet.com. Plaintiff's bare allegations of conspiracy do not suffice.

### 2 3. The Fourth Cause Of Action For Fraud

3 Plaintiff's Fourth Claim for fraud offers nothing more than a "formulaic recitation of the  
4 elements" of a fraud claim. *Iqbal*, 556 U.S. at 678. The FAC alleges that "Defendants made claims  
5 that they purported as true," but that the claims were in fact false. FAC ¶ 242. What those  
6 supposedly false claims were and how Plaintiff was harmed is not explained. These allegations do  
7 not suffice under *Twombly* and *Iqbal*, much less under Rule 9(b), which requires the pleading of  
8 fraud with particularity.

### 9 4. The Fifth Cause Of Action For Deceit

10 Just as with the Fourth Claim, the Fifth Claim for deceit contains a rote listing of the  
11 elements of a claim with no facts alleged concerning what was purportedly represented, how it  
12 was false, and how Plaintiff was harmed. These allegations contravene *Twombly* and *Iqbal* and do  
13 not state a claim, let alone in compliance with Rule 9(b).

### 14 5. The Sixth Cause Of Action For Concealment

15 The Sixth Claim alleged that Defendants "engaged in numerous acts of Concealment (e.g.  
16 during discovery in *Briggs v. Blomkamp*, witnesses and agents for the Defendants intentionally  
17 failed to disclose certain facts that were known only to them, which the Plaintiff could not have  
18 discovered), in violation of California Civ. Code § 1709." FAC ¶ 248. This claim fails as a matter  
19 of law. It violates the collateral attack doctrine for the reasons discussed above. It also fails to  
20 allege any facts supporting that Defendants "intentionally failed to disclose certain facts that were  
21 known only to them." Section 1709 of the Civil Code is a fraud-based provision. Plaintiff had to  
22 plead this claim with particularity under Rule 9(b) and yet pled no facts at all supporting this  
23 supposed fraud. This claim consists solely of a "formulaic recitation of the elements of a cause of  
24 action" and does not satisfy the *Twombly* and *Iqbal* standard.

### 25 6. The Seventh Cause Of Action For Negligence

26 The Seventh Claim for negligence is patently deficient. It pleads *no facts* supporting that  
27 any of Defendants owed a duty to Plaintiff. It pleads *no facts* to show that Defendants breached  
28 such a duty. It pleads *no facts* supporting that Defendants' breach of some unnamed duty to

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Plaintiff caused him harm. Plaintiff does not come close to satisfying the pleading standard with this claim.

### 7. The Eighth Cause Of Action For Gross Negligence

The Eighth Claim for gross negligence fails for the same reasons as the Seventh Claim. Plaintiff suggests Defendants “engaged in grossly negligent business practices” by “engaging in prohibited business relationships, and failing to read the screenplay [for *Elysium*] before buying its rights.” FAC ¶ 254. These allegations are utterly deficient and fail as a matter of law. First, Plaintiff pleads no facts supporting that Defendants owed a legal duty to him. He states that Defendants engaged in “prohibited business relationships,” but no facts are alleged to support that Defendants owed a legal duty *to Plaintiff* to avoid doing so. Likewise, Plaintiff’s claim that Defendants were negligent in purportedly failing to read the screenplay for *Elysium* before buying the film is nonsensical. Even taking the allegation at face value, Defendants owed not duty *to Plaintiff* to review Blomkamp’s screenplay before acquiring the rights to *Elysium*. Additionally, Plaintiff pleads no facts (as contrasted with conclusions) supporting that Defendants breached any duty, or that this breach harmed Plaintiff in a legally cognizable way. The claim of gross negligence consists of “‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557).

### 8. The Ninth Cause Of Action For Violation Of Labor Code § 1700.39

Plaintiff asserts a Ninth Claim for violation of Section 1700.39 of the California Labor Code, which provides: “No talent agency shall divide fees with an employer, an agent or other employee of an employer.” Plaintiff fails to allege facts supporting that any of Defendants are subject to this provision. Indeed, none of the moving Defendants is a talent agency. Plaintiff fails to allege facts supporting that he has *standing* to assert this claim, which he could not possibly have. Plaintiff fails to adequately allege facts supporting a breach of this provision. Lastly, Plaintiff fails to allege facts supporting that he was damaged by whatever occurrences he claims were in violation of this provision.

### 9. The Tenth Cause Of Action For Unfair Business Practices

Plaintiff’s Tenth Claim for violation of Business & Professions Code § 17200 contends

that certain defendants “secretly entered into a private business partnership with Sony Pictures Entertainment’s CEO, Michael Lynton, as co-owners of Screenbid ....” FAC ¶ 260. Plaintiff alleges that “[i]n these actions the Defendants violated the California’s Unfair Business Practices Act ....” *Id.* These allegations are frivolous.

“California’s unfair competition statute prohibits any unfair competition, which means ‘any unlawful, unfair or fraudulent business act or practice.’” *In re Pomona Valley Med. Group*, 476 F.3d 665, 674 (9th Cir.2007) (citing Cal. Bus. & Prof. Code § 17200, *et seq.*). “Generally speaking, unlawful practices are any activities that are forbidden by law.” *Claridge v. RockYou, Inc.*, 785 F. Supp. 2d 855, 862 (N.D. Cal. 2011) (citing *Samura v. Kaiser Found. Health Plan, Inc.*, 17 Cal.App.4th 1284, 1292, 22 Cal.Rptr.2d 20 (1993)). Unfair acts are those that “offend[ ] an established public policy” or are “immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.” *Podolsky v. First Healthcare Corp.*, 50 Cal.App.4th 632, 647 (1996).

“[T]o pursue either an individual or a representative claim under the California unfair competition law,” a plaintiff “must have suffered an ‘injury in fact’ and ‘lost money or property as a result of such unfair competition.’” *Hall v. Time Inc.*, 158 Cal.App.4th 847, 849 (2008). Courts have described this as a “heightened concept of injury.” *Claridge*, 785 F.Supp.2d at 863. To state a claim, an individual must have “parted, deliberately or otherwise, with some *identifiable sum* formerly belonging to him,” or that he has “parted with some particular item of property he formerly owned or possessed.” *Id.* at 862 (emphasis in original).

Plaintiff fails to allege any facts supporting that Defendants’ supposed conduct is unlawful, unfair, or fraudulent. He further alleges no facts supporting that he suffered an injury in fact and “lost money or property” as a result of whatever it is Defendants are accused of doing.

#### **10. The Eleventh Cause Of Action For Witness Tampering**

Plaintiff’s Eleventh Claim alleges that certain Defendants engaged in witness tampering. According to Plaintiff, such tampering included the disclosure of Rovin’s purportedly falsified expert report and “proffering a statement from writer Simon Kinberg stating that he merely ‘polished’ Def Blomkamp’s screenplay.” FAC ¶ 263. To start, Defendants are aware of no authority supporting that a civil claim lies for damages as the result of supposed witness

1 tampering. The CACI instruction that Plaintiff cites (FAC ¶ 263) obviously does not create such a  
 2 cause of action.

3 Further, Plaintiff's claim at its core is a collateral attack on the rulings of the Court in the  
 4 Prior Action to admit the Rovin report and to rely on it and other evidence in granting summary  
 5 judgment. It fails on that basis.

6 Lastly, Plaintiff simply fails to plead *facts* supporting a "plausible" claim. Plaintiff pleads  
 7 no facts supporting that anything in the Rovin expert report or the testimony of Mr. Kinberg is  
 8 false, let alone that Defendants were the ones to procure a false statement. This cause of action  
 9 consists of naked assertions of wrongdoing which do not establish a claim.

10 **V. CONCLUSION**

11 For all the reasons set forth above, Defendants respectfully request that the Court grant  
 12 their Motion and dismiss the Complaint in its entirety.

13  
 14 DATED: January 16, 2018

Respectfully submitted,

15 KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP

16  
 17 By: /s/ Michael J. Kump

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